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# STATE REGISTER

STATE OF MINNESOTA

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**VOLUME 5, NUMBER 31**

**February 2, 1981**

**Pages 1183-1210**



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### Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 5			
32	Monday Jan 26	Monday Feb 2	Monday Feb 9
33	Monday Feb 2	Monday Feb 9	Monday Feb 16
34	Monday Feb 9	Friday Feb 13	Monday Feb 23
35	Friday Feb 13	Monday Feb 23	Monday Mar 2

\*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

\*\*Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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**NOTICE**

**How to Follow State Agency Rulemaking Action in the State Register**

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION**. Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

**The PROPOSED RULES section contains:**

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

**The ADOPTED RULES section contains:**

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All **ADOPTED RULES** and **ADOPTED AMENDMENTS TO EXISTING RULES** published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted **TEMPORARY RULES** appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative listings of rule action in the **MCAR AMENDMENTS AND ADDITIONS** list on the following schedule:

Issues 1-13, inclusive	Issue 39, cumulative for 1-39
Issues 14-25, inclusive	Issues 40-51, inclusive
Issue 26, cumulative for 1-26	Issue 52, cumulative for 1-52
Issue 27-38, inclusive	

The listings are arranged in the same order as the table of contents of the MCAR.

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**Public Hearings on Agency Rules  
February 9-14, 1981**

Date	Agency and Rule Matter	Time & Place
Feb. 11	Pollution Control Agency Ambient Air Quality Standards Hearing Examiner: Howard Kaibel, Jr.	9:30 a.m., PCA Board Rm., 1935 W. County Road B, Roseville, MN

# PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
  2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
  3. of the manner in which persons shall request a hearing on the proposed rules;
- and
4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

## Department of Commerce Insurance Division

### Proposed Amendments to Rules Governing Self-Insurance for Workers' Compensation (4 MCAR §§ 1.9285-1.9294)

#### Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the Insurance Division of the Department of Commerce proposes to adopt the above-entitled amendments to existing rules without a public hearing. The commissioner has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h (1980).

Persons interested in these amendments shall have 30 days to submit comments on the proposed amendments. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Dale L. McDonnell  
Insurance Division  
Department of Commerce  
500 Metro Square Building  
St. Paul, Minnesota 55101  
Telephone: (612) 296-8591

Authority for adoption of these amendments is contained in Minn. Stat. § 176.181, subd. 2. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available from Mr. McDonnell upon request.

Upon adoption of the final amendments without a public hearing, the proposed amendments, this notice, the Statement of Need and Reasonableness, all written comments received, and the final amendments as adopted will be delivered to the

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## PROPOSED RULES

Attorney General for review as to form, legality, and substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final amendments as proposed for adoption, should submit a written statement of such request to Mr. McDonnell.

The proposed amendments, if adopted, would change some of the requirements for both individual and group self-insurers. Specifically, the proposed amendments would (a) change the time period for which security deposits must be held, (b) change some of the annual filing requirements for all self-insurers, (c) permit members of a group self-insurer to submit accounting reviews instead of certified financial statements if certain conditions are met, (d) allow certain financial requirements for group self-insurers to be waived if certain conditions are met, and (e) require all self-insurers to notify the commissioner of any decision to terminate their self-insurance authority.

Copies of this notice and the proposed rules are available and may be obtained by contacting Mr. McDonnell.

January 12, 1981

Michael D. Markman  
Commissioner of Insurance

### Amendments as Proposed

#### 4 MCAR § 1.9288 Acceptable securities and surety bonds.

H. Any securities deposited with the State Treasurer or surety bonds held by the commissioner may be exchanged or replaced by the depositor with other acceptable securities or surety bonds of like amount so long as the market value of the securities or amount of the surety bond equals or exceeds the amount of deposit required. If securities are replaced by a surety bond the self-insurer shall be required to maintain securities on deposit in an amount sufficient to meet all outstanding workers' compensation liability arising during the period covered by the deposit of the replaced securities subject to the limitations on maximum security deposits established in 4 MCAR § 1.9291 G. and § 1.9292 H.

#### 4 MCAR § 1.9289 Filing of reports.

A. Incurred losses, paid and unpaid, specifying both indemnity and medical losses by classification, and payroll by classification, and current estimated outstanding liability for workers' compensation shall be reported to the commissioner by each self-insurer on a calendar year basis, in a manner and on forms available from the commissioner. Such information shall be reported on a calendar year basis and Payroll information must be filed by April 1 of the following year, beginning April 1, 1981 and loss information and total workers' compensation liability must be filed by August 1 of the following year.

C. Each self-insurer shall report to the commissioner any workers' compensation claim from the previous year where the full, undiscounted value is estimated to exceed \$50,000 within ten days of obtaining knowledge that the claim may exceed \$50,000 with the annual loss report due August 1 and in a manner and on forms prescribed by the commissioner.

E. Each group self-insurer shall, within four months after the end of the fiscal year for that group, annually file a statement showing the combined net worth of its members based upon either each individual member's annual certified financial statement or an accounting review performed by a certified public accountant if the requirements for use of an accounting review specified in 4 MCAR § 1.9292 B. are met, together with such other financial information the commissioner may require to substantiate data in the group's summary statement. This subdivision shall not apply if the applicable financial requirements have been waived pursuant to 4 MCAR § 1.9292 R.

#### 4 MCAR § 1.9291 Requirements for individual self-insurers.

M. Any individual self-insurer that voluntarily terminates its self-insurance authority shall give notice to the commissioner not less than 30 days before any such termination is to take place.

#### 4 MCAR § 1.9292 Requirements for group self-insurers.

B. After the initial application along with and the bylaws or plan of operation have been approved by the commissioner, or at the time of the initial application the group shall then submit: the names of employers that will be members of the group; an indemnity agreement providing for joint and several liability for all group members for any and all workers' compensation claims incurred by any member of the group as set forth in Appendix II signed by an officer of each member; and a certified financial statement of each member, provided that an accounting review performed by a certified public accountant may be substituted for a certified financial statement if the group selects the lower retention from the Workers' Compensation Reinsurance Association and deposits a one million dollar (\$1,000,000.00) bond in place of the deposit requirement of subdivision H.

R. The financial requirements of B. and C. of this section shall be waived if the group self-insurer has purchased aggregate excess insurance from an insurer licensed to do business in the State of Minnesota, and that excess insurance indemnifies all losses of the group self-insurer, other than those reimbursable by the Workers' Compensation Reinsurance Association, in excess of the annual premiums collected by the group less the sum of annual administrative costs, premiums payable to the Workers' Compensation Reinsurance Association and premiums payable to the excess insurer. If aggregate excess insurance is terminated, the service company shall inform the commissioner within two days after receipt of notice of cancellation.

S. Any group self-insurer that voluntarily terminates its self-insurance authority shall give notice to the commissioner not less than 30 days before any such termination is to take place.

## **Housing Finance Agency**

### **Proposed Temporary Rules Governing the Rental Rehabilitation Loan Program**

#### **Request for Public Comment**

Notice is hereby given that the Minnesota Housing Finance Agency has proposed the following proposed temporary rules for the purpose of implementing the Rental Rehabilitation Loan Program.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rules for 20 days immediately following publication of this material in the *State Register* by writing to Mary Tingerthal, Manager Home Improvement Programs, Minnesota Housing Finance Agency, 333 Sibley Street, Suite 200, St. Paul, Minnesota 55101. The proposed temporary rules may be revised on the basis of comments received. Any written material received shall become part of the record in the final adoption of the proposed temporary rules.

January 19, 1981

James J. Solem  
Executive Director

#### **Temporary Rules as Proposed**

##### **Chapter Six A: Rental Rehabilitation Loans**

##### **12 MCAR § 3.053 Eligible applications.**

A. Each applicant must individually or in the aggregate possess at least a one-third interest in a fee, or a contract for deed, or a life estate in the property to be improved. However, occupancy of the property by the applicant shall not be required.

B. Each applicant must be a reasonable credit risk with the ability to pay the loan obligation, as determined by the agency or by the lending institution, if any, servicing the loan on behalf of the Agency.

C. To be eligible the structure must be in need of repairs pursuant to § 116H.129, subd. 3, of Minnesota Statutes (state energy conservation standards). For structures less than 15 years old only improvements necessary to bring the structure into compliance with the state energy conservation standards are eligible.

D. The structure to be improved must not be in violation of applicable zoning ordinances or other applicable land use guides.

E. The property must be used primarily for residential purposes and must consist primarily of comprehensive living units including kitchen and bathroom facilities. Mobile homes and trailers shall not be eligible for Rental Rehabilitation Loans.

F. Rental Rehabilitation Loan proceeds must be used to finance only improvements upon or in connection with existing structures.

G. All improvements must be reasonably capable of being completed (except for causes beyond the applicant's reasonable control, such as fire, strike, and shortage of materials) within nine months of the date of the first disbursement of funds pursuant to the Rental Rehabilitation Loan.

H. At the time of application, conventional financing must not be available from private lenders upon equivalent terms and conditions.

I. The structure to be improved must be occupied at the time of loan closing primarily by persons and families of low and moderate income. Structures containing six rental units or less shall be occupied by persons and families of low and moderate income.

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## PROPOSED RULES

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income in at least one of the units in the case of a one or two-unit rental structure, two of the units in the case of a three-unit rental structure, three of the units in the case of four-unit rental structure, four of the units in the case of a five or six-unit rental structures, and at least 75% of the rental units in the case of rental structures containing more than six units.

### 12 MCAR § 3.054 Eligible improvements.

A. Improvements made with Rental Rehabilitation Loan proceeds shall satisfy the following conditions:

1. the structure must be brought into compliance with the standards established in § 116H.129, subd. 3, of Minnesota Statutes, (state energy conservation standards).
2. for structures less than 15 years old only improvements necessary to bring the structure into compliance with the state energy conservation standards are eligible.
3. for structures more than 15 years old permanent general improvements are eligible if the structure has been or will be brought into compliance with the state energy conservation standards.

B. Each improvement must be a permanent general improvement. Permanent general improvements shall include additions, alterations, renovations, or repairs upon or in connection with existing structures, which materially preserve or improve the basic livability, safety, or utility of the property. However, conversions of structures, or portions thereof, from non-residential use to residential use are not eligible. Permanent general improvements shall not include materials, fixtures, or landscaping of a type or quality exceeding that customarily used in the locality for properties of the same general type as the property to be improved.

C. With the exception that the structure must be brought into compliance with the state energy conservation standards, each improvement must be made in compliance with all applicable health, fire prevention, building, and housing codes and standards; provided however, that no application for a Rental Rehabilitation Loan for property occupied by the owner shall be denied solely because the improvements will not bring such property into full compliance with all such codes and standards.

D. Rental Rehabilitation Loan proceeds shall not be used for the payment, wholly or in part, of assessments for public improvements; provided, however, that such proceeds may be used for improvements which will bring an individual sewage disposal system (including septic systems) located on the property into compliance with local, state, or federal environmental and sanitary standards.

E. All contracts covering all or any portion of an improvement must contain an MHFA approved warranty of workmanship and materials.

## ADOPTED RULES

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The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

## Department of Health Vital Statistics Division

### Adopted Amendment of Vital Statistics Rule 7 MCAR § 1.008

#### Order Amending Rule

Notice of the commissioner's intent to amend the above-entitled rule without a public hearing was published in the *State Register* on November 24, 1980 and was sent by United States mail to all persons on the list maintained by the agency pursuant

to Minn. Stat. § 15.0412, subd. 4 on November 17, 1980. After affording interested and affected persons an opportunity to submit comments for 30 days after notice, receiving no written requests for a public hearing within the 30-day comment period, and determining the need for and reasonableness of the above-captioned rule,

Now, therefore, it is ordered that these rules identified as 7 MCAR § 1.008 are amended this 12th day of January, 1981 pursuant to authority vested in me by Minn. Stat. § 144.12 (1980) and pursuant to Minn. Stat. § 257.33 (1980).

George R. Pettersen, M.D.  
Commissioner of Health

## Department of Public Welfare Mental Health Bureau

### Adopted Rule Governing the Administration of Specified Therapies to State Hospital Patients

The proposed rule 12 MCAR § 2.020 (since changed to 12 MCAR § 2.016) Volume 4, Number 6, p. 140, August 13, 1979 (4 S.R. 140) is adopted with the following amendments:

#### 12 MCAR § ~~2.020~~ 2.016

A. Introduction. This rule governs the administration of the treatment ~~modalities~~ methods specified in part B. of this rule to committed patients residing at state hospitals.

#### B. Regulated treatments.

± The following treatments must be administered pursuant to the provisions of parts C. through E. of this rule:

1.a- functional neurosurgery (psychosurgery) ~~including the ablation or destruction of histologically normal brain cells by any medical or surgical procedure;~~

2.b- electroconvulsive therapy, or any other convulsive therapy;

3.e- coma therapy (including insulin);

4.d- injection of any chemical substance as an aversive therapy;

5.e- medically prescribed maintenance therapy using substances set forth in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 812. Provided, however, that this rule shall not apply to the prescription of any substance set forth in Schedule II when:

a.(1) such prescription is made for the treatment of Parkinsonism, epilepsy, hyperperistalsis, narcolepsy, or hyperkinesia, or

b.(2) such prescription is necessary for the preoperative or postoperative care of the patient.

#### C. Procedures.

± None of the treatment ~~modalities~~ methods listed in part B. shall be administered to a patient committed to a state hospital unless the medical director of the state hospital, on the basis of consultation with the patient's treating physician, has determined in accordance with the provisions of part D. of this rule that the treatment ~~modality~~ method is medically indicated for the committed patient; and

1.a- the court order committing the patient to the state hospital authorizes administration of the proposed treatment ~~modality~~ method; or

2.b- in the case of committed adult patients, written consent is obtained on a form which specifies the nature, purpose, risks and effects of the proposed treatment and advises the patient of the right to consult with any other persons regarding this decision and to withdraw consent at any time. The signed consent shall be accessible to the patient and must include a

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## ADOPTED RULES

certification by the medical director of the state hospital or the patient's treating physician that the patient has read and understands the terms of the document and that the patient is ~~sufficiently~~ competent to give an informed consent to the proposed treatment; or

~~3.e-~~ in the case of a committed mentally retarded resident, written consent is obtained from the closest responsible relative on a form which specifies the nature, purpose, risks and effects of the proposed treatment and advises the relative of the right to consult with any other persons regarding the decision and to withdraw consent at any time. The signed consent shall be accessible to the resident's responsible relative and must include a certification by the medical director of the state hospital or the resident's treating physician that the relative has read and understands the terms of the document. If the retarded resident also is under guardianship or conservatorship of the commissioner, Department of Public Welfare, Minn. Stat. § 252A.11, the commissioner must give the above consent as provided in subd. 1(a) or (g) in addition to the relative's consent. A certification shall be made by the medical director of the state hospital or the resident's treating physician that the retarded resident has received an explanation of the proposed treatment to the extent of the retarded resident's understanding; or

~~4.d-~~ judicial authorization for the administration of the proposed treatment is granted by a court of competent jurisdiction pursuant to the provisions of part E. of this rule; or

5. in the case of committed minors, including mentally retarded minors, treatments regulated by this rule may not be administered without prior judicial authorization pursuant to part E. of this rule.

### D. Factors to be considered in determining medical indications.

~~1-~~ In assessing whether any of the treatment ~~modalities~~ methods listed in part B. are medically indicated for a committed patient, the medical director and the patient's ~~treating~~ physician shall consider the following factors in relation to such patient:

~~1.a-~~ the predicted extent and duration of changes in mental activity and behavior patterns effected by the treatment;

~~2.b-~~ the risks of adverse side effects compared with potential benefits to the patient;

~~3.e-~~ the experimental nature of the treatment;

~~4.d-~~ its acceptance by the medical community of this state and whether less intrusive methods would secure the same benefits; and

~~5.e-~~ the extent of intrusion into the patient's body and the pain connected with the treatment; and

6. the patient's ability to competently determine for himself whether the treatment is desirable.

### E. Hearings.

~~1-~~ In cases where the provisions of part ~~C.1.d.~~ C.4 of this rule apply, none of the treatment ~~modalities~~ methods specified in part B. of this rule shall be administered absent judicial authorization. The state hospital medical director or his designee shall petition the probate or the county court of the county financially responsible for ~~of the patient's settlement for such authorization~~ patient as specified by Minn. Stat. § 256D.18, subd. 2. Where necessary and appropriate, this court may arrange to have the matter heard in the county of the patient's presence.

~~1.a-~~ The petition shall state the nature of the proposed treatment, describe its purpose, recite the risks and effects of the procedure and recite the findings of the medical director and/ or treating physician as provided in parts C. and D. of this rule.

~~2.b-~~ The petition shall request the appointment of a guardian ad litem to represent the patient and that this person be an attorney if legal counsel is not otherwise available to the patient.

~~3.e-~~ A copy of the petition shall be supplied to the welfare department or other designated agency in the county of the patient's settlement financial responsibility in advance of the hearing.

~~4.d-~~ The medical director shall seek representation from the county attorney of the county in which the hearing is held. In the event the county attorney is unable to provide such representation, the medical director shall seek legal representation through the Department of Public Welfare.

~~5.e-~~ The cost of such hearings shall be met by the ~~patient's county of settlement,~~ financially responsible for the patient as specified by Minn. Stat. § ~~253A.20~~ 256D.18, subd. 2.

F. Exception. This rule does not affect the administration of generally recognized treatment ~~modalities~~ methods not specified in part B.

### G. Definitions.

1. Functional neurosurgery (psychosurgery)—a general term used to describe brain operations done to relieve the

symptoms of mental illness, and includes the ablation or destruction of histologically normal brain cells by any medical or surgical procedure. This term includes, but is not limited to, a labotomy.

2. Convulsive therapy—a type of psychiatric treatment where central nervous system seizures are induced by electrical, chemical, or other means.

3. Coma therapy—any type of psychiatric treatment where loss of consciousness occurs as a part of the regular treatment process.

4. Aversive therapy—a treatment procedure where noxious substances (or other unpleasant stimuli) are used to produce a change in behavior.

5. Schedule II drugs—a general category of drugs controlled by federal law because of increased risk of abuse and/or addiction.

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**TAX COURT**

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

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**State of Minnesota****Tax Court**

Robert W. Hicks,

Appellant,

v.

The Commissioner of Revenue,  
Docket No. 2768

Appellee.

Order dated January 14, 1981.

The taxpayer has appealed from the Commissioner's Order dated September 21, 1978 relating to income taxes for the taxable years 1976 and 1977 and the matter was heard by the undersigned on October 30, 1980 at the Minnesota Tax Court at 444 Lafayette Road, in the City of St. Paul, Minnesota, Judge Jack Fena presiding.

Robert W. Hicks, appeared pro se,

Paul R. Kempainen, Special Assistant Attorney General, appeared for appellee.

**Decision**

The Order of the Commissioner of Revenue is affirmed, provided that appellant shall be further liable for additional interests from the date of September 21, 1978, which is the date that the Commissioner calculated the change in appellant's tax due.

**Findings of Fact****Jack Fena**

1. In both the years of 1976 and 1977 appellant was a resident of the State of Minnesota and was employed by North Central Airlines, Inc. as a pilot.

2. Appellant filed his Minnesota income tax return in a timely manner in each of the years of 1976 and 1977 upon which he attached his wage and tax statements, Form W-2, and included his name and address but supplied no further information upon the said returns.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

3. Instead of including other items of income tax deductions he typed in on said returns in all of the appropriate spaces the word "object."

4. The Commissioner for the years 1976 and 1977 performed an audit pursuant to Minnesota Statutes § 290.46 and assessed an income tax for each of said years calculating same upon the information contained in the W-2 form and giving the taxpayer deductions as shown on his W-2 forms as well as any other information that the commissioner had.

5. Appellant furnished no further information to the Commissioner of Revenue, and appellant had an administrative conference with the Income Tax Division of the Minnesota Department of Revenue at which time he did not furnish any further information.

6. It appears that for the year ending on December 31, 1976 the appellant was assessed additional tax in the sum of \$3,475.31 plus interest in the sum of \$357.24 totaling \$3,832.55; and for the tax year ending on December 31, 1977 appellant was assessed additional income tax of \$6,617.03 plus interest in the sum of \$150.85 totaling \$6,767.86, for a total additional taxes and interest due in the two years in question amounting to \$10,600.43, the date of this total figure arrived at by the Commissioner being September 21, 1978.

**Conclusions of Law**

1. The Commissioner's Order herein dated September 21, 1978, assessing additional income tax and interest against the appellant for the taxable years 1976 and 1977, comes before this Court as being prima facie valid under Minn. Stat. § 271.06, subd. 6, and the burden is upon the Appellant to come forward with evidence to prove its invalidity.

2. The Appellant has failed to meet his burden of proof by presenting no evidence at trial. Furthermore, Appellant's arguments based on the Fifth Amendment and on the erroneous assertion that his wages did not constitute taxable income are insufficient as a matter of law to change his assessed tax liability herein.

3. The Commissioner's Order dated September 21, 1978, should therefore be affirmed in all respects.

**Memorandum**

The Court has examined the returns filed by appellant and the audit reports submitted by the Minnesota Department of Revenue, Income Tax Division, for each of said years and finds them to be proper and in order.

The amount of \$10,600.43 was arrived at including interest owing thereon on September 21, 1978 and the Court finds that the interest applied is continuing up and through the time of payment.

For the above reasons and based upon the above findings the Court affirms the Commissioner's Order.

Jack Fena, Judge

**State of Minnesota**

William J. and Barbara Proetz,

v.

The Commissioner of Revenue,  
Docket No. 2965

**Tax Court**

Appellants,

Appellee.

Order dated January 16, 1981.

This is an appeal from the Commissioner of Revenue's Order dated July 5, 1979 relating to income tax liability of appellants of \$10,100.18 for the taxable year 1977.

The above entitled matter involving the disallowance of various claimed deductions by appellants on their Minnesota State Income Tax for the taxable year of 1977 came on for trial before Judge Jack Fena at the Minnesota Tax Court, at 444 Lafayette Road, St. Paul, Minnesota on August 12, 1980.

Mr. Michael Simonson, of Simonson, Groh and Lindteigen, Attorneys at Law, 2916 North 68th Street, Suite No. 1, Scottsdale, Arizona 85251 represented and appeared on behalf of appellants, William J. and Barbara Proetz, and Mr. Paul R. Kempainen, Special Assistant Attorney General, of the State of Minnesota, appeared on behalf of the Commissioner of Revenue, Appellee.

The Court, having heard and considered the evidence adduced by the parties and being fully and duly advised in the matter, and upon all the files, records, proceedings and testimony herein, makes the following:

**Decision**

The Order of the Commissioner of Revenue is hereby affirmed.

**Findings of Fact****Jack Fena**

1. The appellants, William J. and Barbara Proetz, are cash basis, calendar year taxpayers residing in Woodbury, Minnesota and the taxable year in question is 1977.

2. During the year 1977, appellant William Proetz was a self-employed chiropractor doing business under the name of Woodbury Chiropractor Center. As a self-employed chiropractor William Proetz earned a net profit of \$75,483 in the year in question, and also earned (jointly with his spouse) interest and dividend income in the amount of \$3,369. The appellant Barbara Proetz individually reported 1977 income in the amount of \$12,000.

3. Appellants reported the above referred to income in the filing of their 1977 Minnesota Individual Income Tax Return, and then subtracted and deducted four items which were subsequently disallowed by the commissioner on the audit, and which are the subject of this appeal.

The four items in contention and the amounts on each are as follows:

(a) The commissioner recomputed Appellants' federal tax deduction, resulting in additional taxable income of \$2,803 to William, and \$383 to Barbara.

(b) The commissioner disallowed a claimed contribution deduction to the "Family and Health Improvement Society of Woodbury, Minnesota" (hereafter, the "Woodbury Society"), resulting in additional taxable income of \$5,497.50 to William, and \$5,497.50 to Barbara.

(c) The commissioner disallowed the private school tuition deduction to Creative Playhouse, resulting in additional taxable income of \$200 to William, and \$200 to Barbara.

(d) The commissioner disallowed claimed losses incurred by out-of-state partnerships, resulting in additional taxable income of \$51,001 to William.

4. It appeared at the trial that appellants no longer challenge the commissioner's recomputation of the federal tax deduction and therefore this issue is resolved in favor of the commissioner upon that basis.

5. The claimed deduction to the Woodbury Society was disallowed by the commissioner in the audit report wherein the commissioner stated:

Since you have not complied with the requests of the State of Minnesota to furnish proper information to establish an exempt status for Family & Health Improvement Society of Woodbury, Minnesota, [and] this organization has not been recognized as an exempt entity, therefore your contributions to that organization are disallowed. Adjustment is made to each spouse in the same proportions as deductions were claimed on your return, 50% to each spouse.

6. At the trial, appellants presented no evidence to substantiate their claim that the Woodbury Society is a tax exempt organization to which the deductible contributions can be made under Minn. Stat. § 290.21, subd. 3(b).

7. The Court finds that the Woodbury Society was never incorporated under the laws of the State of Minnesota or any other state of the United States.

8. The Court finds that the Woodbury Society was allegedly created under a one page pre-printed form certificate designated as "Charter No. 25" dated December 7, 1977 and signed by one Phillip S. Fry as president of the "Family and Health Improvement Society" with headquarters being a post office box in Cambridge, Ohio.

The "Bylaws" of the Woodbury Society were on a pre-printed form with blank spaces available to write in the name and address of the local Woodbury Society.

The address of the Woodbury Society as inserted in the Bylaws is identical to that of the appellants' residence stated on their 1977 Minnesota Income Tax Return.

The only three members of the Woodbury Society listed in the "Bylaws" are those of the appellants herein, William Proetz and Barbara Proetz, along with one James Proetz.

9. On June 2, 1978 the Income Tax Division of the Department of Revenue of the State of Minnesota refused to grant the Woodbury Society tax exempt status until the Woodbury Society could show that it had been granted tax exempt status by the United States Internal Revenue Service. There was no evidence presented at the trial as to whether the Woodbury Society ever applied for, or was granted, exempt status by the United States Internal Revenue Service.

10. On June 16, 1978 the Sales & Use Tax Division of the Minnesota Department of Revenue refused to grant the Woodbury Society sales and use tax exemption, the department instead asking for further information, and no evidence was presented that any further information was ever provided by appellants.

11. Appellants presented no evidence at the trial substantiating that they ever made any contributions to the Woodbury Society or what amounts they allegedly contributed to the Woodbury Society.

12. The Commissioner of Revenue disallowed appellants' claimed deduction for private school tuition in the audit report and stated:

Allowable deduction for tuition, transportation and nonreligious text books is limited to dependents attending grades kindergarten through grade twelve. No deduction is allowable for children to attend nursery school or prekindergarten classes or for attending schools after graduation from high schools. An examination of the credentials of Creative Playhouse revealed this organization is primarily a nursery school and is accredited to prepare 5 and 6 year olds at the kindergarten level for entry into first grade.

Your records reveal that in 1977 your dependent, Christen, age 4 was too young for kindergarten age. Therefore your deduction for tuition paid Creative Playhouse is disallowed in the amount of \$400.00.

13. The commissioner disallowed appellants' claimed deduction for partnership losses in the audit report and stated:

Losses from a trade or business conducted wholly outside the state of Minnesota are not an allowable deduction on your Minnesota Return.

The losses of \$51,001.00 claimed on line 5 of your Minnesota return are disallowed because none of the firms involved have filed informational returns with Minnesota showing an apportionment of income/losses assignable to Minnesota based on apportion criteria in Minnesota statutes.

Adjustment is made to husband's income because entire loss was subtracted from his income on your return.

The appellant presented no evidence at trial to either refute these findings or to otherwise substantiate the claimed deduction. Instead, the record shows that two of the largest claims of partnership loss stemmed from partnerships located outside Minnesota, to wit: Tideway Energy Limited No. 2 in Jackson, Mississippi, and North Carolina Property Investors, Ltd. in Dallas, Texas. The record further shows that neither of these partnerships have ever filed a Minnesota Partnership return.

14. Based upon the adjustments made in the Audit Report the Commissioner of Revenue issued his Order dated July 5, 1979, assessing additional income tax liability against appellants in the amount of \$9,239 plus interest. The appellants have filed a timely appeal with the Tax Court from this Order.

The legal issues involved before the Court are as follows:

1. Whether the commissioner correctly disallowed appellants' claimed deduction for an alleged contribution to an entity personally formed and controlled by the appellants and called the Family and Health Improvement Society of Woodbury, Minnesota.

2. Whether the commissioner correctly disallowed appellants' claimed deduction for private school tuition allegedly paid to Creative Playhouse.

3. Whether the commissioner correctly disallowed appellants' claimed deduction for losses of partnerships located entirely outside the State of Minnesota.

### Conclusions of Law

1. Pursuant to Minnesota Statutes § 271.06, subd. 6 the Order of the Commissioner of Revenue herein is prima facie valid.

2. The commissioner correctly disallowed appellants' claimed deduction for an alleged contribution to an entity personally formed and controlled by appellants and called the Family and Health Improvement Society of Woodbury, Minnesota.

3. The commissioner correctly disallowed appellants' claimed deduction for private school tuition allegedly paid to Creative Playhouse.

4. The commissioner correctly disallowed appellants' claimed deduction for losses of partnerships located entirely outside the State of Minnesota.

5. The Statutes cited and referred to in the herein attached Memorandum are incorporated herein by reference and made a part of the Conclusions of Law herein.

### Memorandum

Minn. Stat. § 271.06, subd. 6 provides that the commissioner's orders are prima facie valid. Appellants herein have the burden of proof that the commissioner's order disallowing their claimed deductions was incorrect.

At the trial of the matter the taxpayers did not present themselves in court and appeared only by their attorney. They called no witnesses and presented no evidence except the joint exhibits received in trial referred to as numbers 1 through 9 which were

received by stipulation between the parties. Apparently the appellants rely on these exhibits to substantiate their claimed deductions. The court does not at all agree with appellants' position.

The Minnesota Supreme Court said in the case of *Northern Natural Gas, Co. v. Commissioner of Revenue*, 312 Minn. 177, 182, 251 N.W. 2d 125, 128 (1977):

It is a well-established rule in the law of income taxation that deductions are a matter of legislative grace and therefore statutes that provide for such deductions should be strictly construed . . . A necessary corollary of this general rule is that a taxpayer claiming to be entitled to a deduction is required to demonstrate that his claim is allowable under the terms of the statute . . .

See also, Minn. Stat. § 290.09, subd. 9(c).

Minn. Stat. § 290.21, subd. 3(b), provides as follows:

Subd. 3. An amount for *contribution* or *gifts* made within the taxable year:

\* \* \* \* \*

(b) to or for the use of any community chest, corporation, organization, trust, fund, association, or foundation located in and carrying on substantially all of its activities within this state, organized and operating *exclusively* for religious, charitable, public cemetery, scientific, literary, artistic, or educational purposes, or for the prevention of cruelty to children or animals, *no part of the net earnings of which inures to the benefit of any private stockholder or individual*, (Emphasis added.)

From the evidence before the court the Family and Health Improvement Society of Woodbury (hereafter, the "Woodbury Society") does not appear to be "organized and operated *exclusively* for religious . . . purposes." It also is clear that there was no "contribution or gift" as contemplated by the statute and interpreted in the Minnesota Supreme Court case of *Gotlieb v. Commissioner of Taxation*, 310 Minn. 62, 245 N.W. 2d 244 (1976). In that case it was held that payments made to a religious organization in consideration of religious training being provided to taxpayers' children were not "contributions or gifts" within the meaning of the statute because they were made in return for the rendering of an economic benefit. The court in the *Gotlieb* case, *supra*, adopted the federal law and stated:

*The phrase "contribution or gifts as used in the Minnesota statute contemplates the same kind of transactions which are contemplated by its counterpart sections in the Federal Internal Revenue Code. As the United States Supreme Court said in Commr. of Int. Rev. v. Duberstein, 363 U.S. 278, 80 S. Ct. 1190, 4 L. Ed. 2d 1218 (1960) (construing § 22[b] [3] of the 1939 Internal Revenue Code), the mere absence of a legal or moral obligation to make a payment does not establish that it is a gift. The court also said in Duberstein that, if the payment proceeds primarily from the constraining force of any moral or legal duty or from the incentive of anticipated benefit of an economic nature, it is not a gift and that, where the payment is in return for services rendered, it is irrelevant that the donor derives no economic benefit from it. The court decided a gift in the statutory sense proceeds from a "detached and disinterested generosity," and said that what controls is the intention with which payment, however voluntary, was made. (Emphasis added.)*

The address of the Woodbury Society is the same as that of the taxpayers personal residence. The only three members of the Woodbury Society are the two taxpayers themselves and one James Proetz. The taxpayers claim to have actually contributed \$73,898 to the Woodbury Society between December 7th, 1977 the date it was established and the end of the year 1977. The court can only conclude that the large "contributions" that were given to the Society were in fact used for the taxpayers personal debts and living expenses after being laundered through the Society over which the taxpayers retained personal and probably total control. Remember that two thirds of the membership of the Society were the taxpayers themselves and the headquarters of the society were in the taxpayers home. It appears to the court that the taxpayers attended to and did receive substantial economic benefit in return for their alleged contributions of \$73,898 to the Woodbury Society in 1977.

The Woodbury Society was personally formed and controlled by the taxpayers. It obviously is not an organization "no part of the net earnings of which unures to the benefit of any private . . . individual." The personal control, and the large amount of the alleged "contributions" assures this court that the Society's "income" inures to the personal benefit of the taxpayers themselves.

The United States Tax Court has recently denied claimed contribution deductions for alleged transfers to churches set up by individuals in the similar manner that the taxpayers set their alleged church up in this case. In the decision of *Hugh J. Clippenger*, T.C. memo 1978-107 (filed March 20, 1978). The Christian Charities Church of Newark, Ohio was formed by an Ohio truck driver and his wife. He claimed he was the minister and the church operated out of his home. In denying his claimed contribution to his "church" the U.S. Tax Court said:

[I]t is clear from the record that the principal, if not the sole purpose of petitioner's efforts, was to establish an organization which would enable him to indirectly convert personal expenditures into Federal income tax deductions which would inure exclusively to the personal benefit of himself and his wife.

## TAX COURT

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Also see United States Tax Court of *Patrick A. Heller*, T.C. Memo 1978-149 (filed April 17, 1978). This was another situation where the taxpayer lived in an apartment that the church paid rental and utility bills for and the taxpayer being the sole minister of the church of about six members. Also see the Minnesota Tax Court decision in the case of *Ideal Life Church of Lake Elmo v. County of Washington*, Tax Court Docket Number 48471.

The \$400 deduction for private school tuition that taxpayers took would be totally invalid under Minn. Stat. § 290.09, subd. 22 and taxpayers did not even bother to address this issue in their brief. It appeared at the trial that the commissioner's order on this point was not even contested and the court rules in favor of the commissioner on this matter.

William Proetz claimed deduction for losses incurred by two partnerships, Tideway Energy, Ltd. No. 2, and North Carolina Property Investors, Ltd. These losses were incurred by the partnerships and past through to William Proetz as a partner. These losses were incurred in connection with partnership businesses conducted wholly outside the state of Minnesota. The Minnesota Supreme Court in *Friedell, et al v. Commissioner of Revenue*, 270 N.W. 2d 763 (1978) stated as follows:

The basis for our holding is the principle of taxation that partnerships are not taxed as such but instead are treated as conduits through which the taxpaying obligation is passed to the individual partners in accordance with their distributive shares. I.R.C. § 701, et seq., Minn. St. 290.31, subds. 1 and 2. See, *United States v. Basye*, 410 U.S. 410, 93 S. Ct. 1080, 35 L. Ed. 2d 412 (1973). This principle is further reflected in the Minnesota statutory scheme by Minn. St. 290.311, subd. 1(b). Under that statute each item of partnership income, gain, loss, or deduction, if not characterized for Federal income tax purposes, "shall have the same character for a partner as if realized directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership." "Character" of an item, for state tax purposes, includes the attribute of assignability.

The court finds that for the year 1977 the assignable character of both income and loss items is determined under Minn. Stat. (1976) § 290.17 (3). How this section keys in the determination as to the assignability of the item as being where the trade or business of the partnership is conducted not where the investor made his investment. Accordingly, it appears to the court that appellant was required by Minn. Stat. § 290.01, subd. 20(a) (6), to add his non-Minnesota losses back into his federal adjusted gross income so as to arrive at the proper Minnesota gross income. The commissioner's order accomplishes this.

Jack Fena, Judge

### State of Minnesota

Michael E. Stone,

v.

The Commissioner of Revenue,  
Docket No. 3067

### Tax Court

Appellant,

Appellee.

Order dated January 19, 1981.

This is an appeal from the Commissioner's Order dated January 7, 1980 relating to income tax liability of \$949.83 for the taxable year 1977. The taxpayer has appealed from the above referred order and the matter was heard by the undersigned on September 25, 1980 at the courtroom of the Minnesota Tax Court at 444 Lafayette Road, St. Paul, Minnesota by way of an evidentiary hearing before the Court.

Michael E. Stone, appeared pro se,

Paul R. Kempainen, Special Assistant Attorney General, appeared for appellee.

#### Decision

The Order of the Commissioner of Revenue is affirmed in all respects.

#### Findings of Fact

Jack Fena

1. Appellant, Michael E. Stone, is a cash basis taxpayer who in 1977 resided at 853 Forest Dale Road, New Brighton, Minnesota.

2. During the taxable year 1977, Appellant was an employee of Autocon Industries, Inc. By reason of his employment, Appellant was paid by Autocon Industries a total of \$19,546.83 in compensation for the taxable year 1977.

3. During the year 1977, Appellant was an employee of Autocon Industries.

4. For the taxable year 1977, Appellant received a W-2 from Autocon Industries showing that a total of \$19,546.83 in wages and other compensation had been paid to him. Appellant failed to attach this W-2 to his Minnesota income tax return for the

year 1977 and failed to report any items of income or deductions on said return. In the spaces on his return for the reporting of income, deductions, etc., the Appellant simply wrote the words: "Object — 5th Amendment."

5. On April 10, 1979, the commissioner, pursuant to his authority under Minn. Stat. § 290.47, sent a demand letter to Appellant requesting that a correct, complete and proper income tax return be filed for the year 1977 in accordance with the requirements of Minn. Stat. § 290.39, subd. 1.

6. Appellant failed to file a correct, complete and proper return as requested in the commissioner's demand letter dated April 10, 1979.

7. The commissioner accordingly proceeded to audit the taxpayer's incomplete 1977 return based upon the information contained in Appellant's W-2 form and from such other information concerning the credits and deductions as was available. A copy of the Commissioner's Audit Report was entered into evidence. On the basis of said audit report the commissioner assessed an additional tax of \$845.51, and interest of \$104.32, for a total amount due of \$949.83.

8. On January 7, 1980, the Commissioner of Revenue issued his final Order assessing additional income tax and interest against Appellant in the amount of \$949.83. The Appellant has filed a timely appeal with the Tax Court from this Order.

The legal issue is whether the compensation earned by Appellant as an employee of Autocon Industries, Inc. is gross income subject to taxation under Minnesota's income tax law and, whether the Commissioner's Order was validly computed.

#### Conclusions of Law

1. The compensation earned by Appellant as an employee of Autocon Industries, Inc. is gross income subject to taxation under Minnesota's income tax law.

2. The Commissioner's Order herein was validly computed in light of both the evidence presented at trial and the failure of Appellant to introduce any proof that the assessment was improper.

3. The Commissioner's Order herein dated January 7, 1980, is correct and proper and should be affirmed in all respects.

#### Memorandum

The statute in question very clearly points out that the wages received by Appellant are includable in the definition of "gross income" which is taxable by the State of Minnesota. Minnesota Statute (1977 Supp.), § 290.01, subd. 20, in relevant part states:

For each of the taxable years beginning after December 31, 1970, the term "gross income" in its application to individuals, estates, and trusts shall mean the adjusted gross income as computed for federal income tax purposes as defined in the Internal Revenue Code of 1954, as amended through the date specified herein for the applicable taxable year, with the modifications specified in this section.

\* \* \* \* \*

(v) The Internal Revenue Code of 1954, as amended through December 31, 1976, including the amendments made to section 280A (relating to licensed day care centers) in H.R. 3477 as it passed the Congress on May 16, 1977, shall be in effect for the taxable years beginning after December 31, 1976. The provisions of the Tax Reform Act of 1976, P.L. 94-455, which affect adjusted gross income shall become effective for purposes of chapter 290 at the same time they become effective for federal income tax purposes. (Emphasis added).

The State of Minnesota through its statute has adopted the federal adjusted gross income as the basis for calculating Minnesota Individual Income taxes.

Under Internal Revenue Code (I.R.C.) § 62, 26 U.S.C. § 62, federal adjusted gross income is arrived at by taking a taxpayer's gross income minus certain specified deductions not at issue herein.

The term "gross income" for federal income tax purposes is defined in I.R.C. § 61, 26 U.S.C. § 61, in relevant part as follows:

(a) General Definition. Except as otherwise provided in this subtitle, *gross income means all income from whatever source derived*, including (but not limited to) the following items:

(1) *Compensation for services*, including fees, commissions, and similar items; (Emphasis added).

The statutory scheme therefore expressly includes "compensation for services" within the measure of the income taxed by the State of Minnesota. Inasmuch as the taxpayer herein has admitted that the \$19,546.83 earned by him from Autocon Industries was compensation for services, it therefore follows that those earnings were taxable as "gross income" for Minnesota income tax purposes.

While the statutory language itself leaves no room for doubt on this question, it can also be mentioned that the applicable regulations and case law readily support the above conclusion.

Internal Revenue Reg. § 1.61-2, reads in relevant part as follows:

## TAX COURT

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(a) In general. (1) *Wages, salaries, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses (including Christmas bonuses), termination or severance pay, rewards, jury fees, marriage fees and other contributions received by a clergyman for services, pay of persons in the military or naval forces of the United States, retired pay of employees, pensions, and retirement allowances are income to the recipients unless excluded by law.* (Emphasis added.)

The numerous cases cited in appellee's brief is ample reasoning for interpretation of the statutes as set out above, and the Court agrees with the commissioner's position in the case at hand that the appeal is frivolous.

That the Commissioner's Order was validly computed the Court refers the parties to the testimony of Richard J. Metzdorf who was the tax examiner for the Minnesota Department of Revenue that conducted the audit. His testimony, along with the exhibits received into evidence amply show that the Commissioner's Order was valid in all respects.

The Court further orders that interest due in the matter at hand shall continue until the taxes of appellant are paid.

Jack Fena, Judge

## SUPREME COURT

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### Decisions Filed Tuesday, January 20, 1981

Compiled by John McCarthy, Clerk

51155/Sp. State of Minnesota, by Edward Powderly, *et al*, Plaintiffs, Maxine Pflueger, Appellant, Friends of History, Inc., Intervenor, vs. Claire Erickson, *et al*, City of Red Wing, John Doe, *et al*, Goodhue County.

Where owners of row houses, which have been designated an historical resource entitled to protection from impairment and destruction, have declined to preserve their buildings from demolition, the court has a duty under Minn. Stat. §§ 116B.07, .12 (1980), to enjoin destruction until parties interested in preserving the historical resource have had a reasonable opportunity to protect the integrity of the buildings by appropriate legislation or by other equitable remedies.

In the absence of remedial legislation, where neither the owners nor any public body after a reasonable length of time in which to act has elapsed, elects to preserve from demolition a structure which is an historical resource as defined by Minn. Stat. § 116B.02, subd. 4 (1980) the owners have a constitutional right to destroy the buildings or to put the property to any other lawful use, free from the restrictions otherwise imposed by the Minnesota Environmental Rights Act, the Historical Sites Act, and the Municipal Heritage Preservation Statute.

Reversed and remanded with instructions. Otis, J.

## STATE CONTRACTS

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Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

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### Department of Administration Real Estate Management Division

#### Notice of Request for Proposals to Lease Office Space

The Department of Administration desires proposals for the rental of 34,400 square feet of office space for the Department of Economic Security in the St. Paul Central Business District.

Inquiries and responses should be directed to:

Department of Administration  
Real Estate Management Division  
50 Sherburne Avenue, Room G-22  
St. Paul, Minnesota 55155  
Telephone: (612) 296-6674

Proposals must be submitted by 2:30 p.m., February 23, 1981.

## **Department of Public Service Utilities Division**

### **Notice of Request for Proposal for Consultant for Rate Design and Cost of Service Work**

The Minnesota Department of Public Service is soliciting proposals from qualified consultants with experience in telephone utility ratemaking to assist it in performing rate design and cost of service work to be conducted in connection with the petition from Northwestern Bell Telephone Company (NWB) for an increase in rates. The total additional annual revenue requested is 102.5 million dollars.

The department's objective in this project is to thoroughly review and investigate five specific issues. The department wishes to develop clear, consistent and reasonable positions on each of these five issues, and make recommendations to the commission to adopt, modify or reject the proposal of NWB on each of these issues. The five issues concern NWB's proposals for usage sensitive pricing, service connection charges, coin telephone charges, non-uniform percentage increases in some charges, and the issue of installed base migration.

The tasks to be performed by the consultant will, at a minimum, be to complete the following:

A. Thoroughly review and critically evaluate the testimony and exhibits of each of the NWB witnesses who testify on each issue. Gather and evaluate any additional information and documentation which may be relevant to the issue. Prepare cross-examination for each of the NWB witnesses who testify on the issue.

B. As a member of the department staff assigned to this case, develop and deliver direct testimony which responds to NWB's proposal on each issue and present the Department's recommendations on the issue.

C. Develop and deliver rebuttal and/or surrebuttal testimony on the same issue as may be necessary.

The department estimates that the total cost of this project will not exceed \$45,000.

The due date for this proposal is February 23, 1981.

Direct any inquiries to:

Phillip J. Zins  
Department of Public Service  
160 East Kellogg Boulevard  
St. Paul, Minnesota 55101  
Ph. 612/296-7531

## **Department of Public Service Utilities Division**

### **Notice of Request for Proposals for Consultant to Perform Rate of Return Determination**

The Minnesota Department of Public Service is soliciting proposals from qualified consultants with experience in telephone utility ratemaking to assist it in performing rate of return determination in connection with the petition from Northwestern Bell Telephone Company (NWB) for an increase in rates. The total additional annual revenue requested is 102.5 million dollars.

The department's objective in this project is to thoroughly review and investigate the rate of return issues. The department wishes to develop clear, consistent and reasonable positions on the rate of return issues, and make recommendations to the commission to adopt, modify or reject the proposal of NWB on these issues.

The tasks to be performed by the consultant will, at a minimum, be to complete the following:

A. Thoroughly review and critically evaluate the testimony and exhibits of each of the NWB witnesses who testify on each issue. Gather and evaluate any additional information and documentation which may be relevant to the issue. Prepare cross-examination for each of the NWB witnesses who testify on the issue.

## STATE CONTRACTS

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B. As a member of the department staff assigned to this case, develop and deliver direct testimony which responds to NWB's proposal on each issue and present the Department's recommendations on the issue.

C. Develop and deliver rebuttal and/or surrebuttal testimony on the same issue as may be necessary.

The department estimates that the total cost of this project will not exceed \$35,000.

The due date for this proposal is February 23, 1981.

Direct any inquiries to:

Dai-sheng Hong, Ph.D.  
Department of Public Service  
160 East Kellogg Boulevard  
St. Paul, Minnesota 55101  
(612) 296-7603

### **Notice of Request for Proposal for Consultant to Perform Analysis of Business Information System Issue**

The Minnesota Department of Public Service is soliciting proposals from qualified consultants with experience in telephone utility ratemaking to assist it in performing analysis of Business Information System issue in connection with the petition from Northwestern Bell Telephone Company (NWB) for an increase in rates. The total additional annual revenue requested is 102.5 million dollars.

The department's objective in this project is to thoroughly review and investigate the specific issues. The department wishes to develop clear, consistent and reasonable positions on the Business Information System issues, and make recommendations to the commission to adopt, modify or reject the proposal of NWB on these issues.

The tasks to be performed by the consultant will, at a minimum, be to complete the following:

A. Thoroughly review and critically evaluate the testimony and exhibits of each of the NWB witnesses who testify on each issue. Gather and evaluate any additional information and documentation which may be relevant to the issue. Prepare cross-examination for each of the NWB witnesses who testify on the issue.

B. As a member of the department staff assigned to this case, develop and deliver direct testimony which responds to NWB's proposal on each issue and present the department's recommendations on the issue.

C. Develop and deliver rebuttal and/or surrebuttal testimony on the same issue as may be necessary.

The department estimates that the total cost of this project will not exceed \$10,000.

The due date for this proposal is February 23, 1981.

Direct any inquiries to:

Dai-sheng Hong, Ph.D.  
Department of Public Service  
160 East Kellogg Boulevard  
St. Paul, Minnesota 55101  
Ph. 612/296-7603

### **Notice of Request for Proposal for Consultant for Rate Base and Expenses Analysis**

The Minnesota Department of Public Service is soliciting proposals from qualified consultants with experience in telephone utility ratemaking to assist it in performing rate base and expenses analysis in connection with the petition from Northwestern Bell Telephone Company (NWB) for an increase in rates. The total additional annual revenue requested is 102.5 million dollars.

The department's objective in this project is to thoroughly review and investigate the rate base and expenses issues. The department wishes to develop clear, consistent and reasonable positions on each of these issues, and make recommendations to the Commission to adopt, modify or reject the proposal of NWB on each of these issues.

The tasks to be performed by the consultant will, at a minimum, be to complete the following:

A. Thoroughly review and critically evaluate the testimony and exhibits of each of the NWB witnesses who testify on each issue. Gather and evaluate any additional information and documentation which may be relevant to the issue. Prepare cross-examination for each of the NWB witnesses who testify on the issue.

B. As a member of the department staff assigned to this case, develop and deliver direct testimony which responds to NWB's proposal on each issue and present the department's recommendations on the issue.

C. Develop and deliver rebuttal and/or surrebuttal testimony on the same issue as may be necessary.

The department estimates that the total cost of this project will not exceed \$45,000.

The due date for this proposal is February 23, 1981.

Direct any inquiries to:

Dai-sheng Hong, Ph.D.  
Department of Public Service  
160 East Kellogg Boulevard  
St. Paul, Minnesota 55101  
Ph. 612/296-7603

### **Notice of Request for Proposal for Consultant to Investigate the Issue of Western Electric Purchase**

The Minnesota Department of Public Service is soliciting proposals from qualified consultants with experience in telephone utility ratemaking to assist it in investigating the issue of Western Electric Purchase to be conducted in connection with the petition from Northwestern Bell Telephone Company (NWB) for an increase in rates. The total additional annual revenue requested is 102.5 million dollars.

The department's objective in this project is to thoroughly review and investigate the issues of Western Electric pricing, sales, earnings, purchases, costs, productivity and efficiency. The department wishes to develop clear, consistent and reasonable positions on each of these issues, and make recommendations to the commission to adopt, modify or reject the proposal of NWB on each of these issues.

The tasks to be performed by the consultant will, at a minimum, be to complete the following:

A. Thoroughly review and critically evaluate the testimony and exhibits of each of the NWB witnesses who testify on each issue. Gather and evaluate any additional information and documentation which may be relevant to the issue. Prepare cross-examination for each of the NWB witnesses who testify on the issue.

B. As a member of the department staff assigned to this case, develop and deliver direct testimony which responds to NWB's proposal on each issue and present the department's recommendations on the issue.

C. Develop and deliver rebuttal and/or surrebuttal testimony on the same issue as may be necessary.

The department estimates that the total cost of this project will not exceed \$10,000.

The due date for this proposal is February 23, 1981.

Direct any inquiries to:

Dai-sheng Hong, Ph.D.  
Department of Public Service  
160 East Kellogg Boulevard  
St. Paul, Minnesota 55101  
Ph. 612/296-7603

### **Notice of Request for Proposal for Consultant to Perform Analysis in the Area of License Contract**

The Minnesota Department of Public Service is soliciting proposals from qualified consultants with experience in telephone utility ratemaking to assist it in performing analysis in the area of license contract to be conducted in connection with the petition from Northwestern Bell Telephone Company (NWB) for an increase in rates. The total additional annual revenue requested is 102.5 million dollars.

The department's objective in this project is to thoroughly review and investigate the specific issues. The department wishes to develop clear, consistent and reasonable positions on the license contract issues, and make recommendations to the commission to adopt, modify or reject the proposal of NWB on these issues.

The tasks to be performed by the consultant will, at a minimum, be to complete the following:

A. Thoroughly review and critically evaluate the testimony and exhibits of each of the NWB witnesses who testify on each

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issue. Gather and evaluate any additional information and documentation which may be relevant to the issue. Prepare cross-examination for each of the NWB witnesses who testify on the issue.

B. As a member of the department staff assigned to this case, develop and deliver direct testimony which responds to NWB's proposal on each issue and present the Department's recommendations on the issue.

C. Develop and deliver rebuttal and/or surrebuttal testimony on the same issue as may be necessary.

The department estimates that the total cost of this project will not exceed \$10,000.

The due date for this proposal is February 23, 1981.

Direct any inquiries to:

Dai-sheng Hong, Ph.D.  
Department of Public Service  
160 East Kellogg Boulevard  
St. Paul, Minnesota 55101  
Ph. 612/296-7603

## OFFICIAL NOTICES

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Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

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## Minnesota Board on Aging

### Notice of Procedures for Public Hearings

Notice is hereby given that the Minnesota Board on Aging intends to utilize the contested case procedures of Minn. Stat. §§ 15.041-15.052 (1980) and 9 MCAR §§ 2.201-2.299 to meet the requirements set out in 45 C.F.R. § 1321.51 for the provision of hearings to:

- “(1) Any area agency when the State agency proposes to—
  - (i) Disapprove the area plan or plan amendment submitted by the area agency as specified in § 1321.83(b);
  - (ii) Withdraw the area agency's designation as provided in § 1321.85;
- (2) Any applicant for designation as a planning and service area under § 1321.53 whose application is denied;
- (3) Any nutrition project specified in § 1321.143(b)(1) which the area agency proposes to defund; . . . ”

Any such agency or organization desiring a hearing must file a request pursuant to 45 C.F.R § 1321.51(b).

The board invites all area agencies, providers, and older persons within the State to submit written comments regarding this matter. All comments must be received by March 5, 1981, and should be addressed to Mr. Gerald A. Bloedow, Executive Secretary, Minnesota Board on Aging, Suite 204, Metro Square Building, St. Paul, Minnesota 55101.

## Department of Commerce Insurance Division

### Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Self-Insurance Pools of Political Subdivision Relating to Worker's Compensation Liability, Pursuant to Minn. Stat. §§ 471.981 and 471.982.

Notice is hereby given that the Insurance Division of the Department of Commerce is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing self-insurance pools of political subdivisions relating to property and casualty liability. The promulgation of these rules is authorized by Minn. Stat. § 471.982, subd. 2, which permits

the agency to provide standards or guidelines governing the formation, operation, administration, dissolution of self-insurance pools.

The Insurance Division requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Dale L. McDonnell  
Insurance Division  
Department of Commerce  
Metro Square Building, 5th Floor  
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-8591 and in person at the above address.

Any written material received by the Insurance Division shall become part of the record in the event that the rules are promulgated.

William Howard  
Assistant Commissioner of Insurance

## **Department of Education Instruction Division**

### **Notice of Availability of Basic Skills Improvement Grants**

Under Section 222 of Public Law 95-561, the State of Minnesota is pleased to invite competitive applications for the \$50,000 of federal funds which it has available for Basic Skills in School Projects and Basic Skills Parent Involvement Projects.

Applications will be approved in amounts ranging from \$1,000 to \$15,000, with the lower end of that range being emphasized. It is anticipated that 10-20 proposals will be funded.

School projects must:

1. Identify the population to be served.
2. Identify needs of the population.
3. Address either development of goals and objectives, inservice training, getting support of parents, evaluation procedures or dissemination activities. Nonpublic schools may apply only through the Public School District in which they reside.

Parent involvement projects may do one, some or all of the following:

1. Develop and disseminate materials for home use.
2. Coordinate between learning experiences in the home and those in schools.
3. Plan for, develop and improve centers accessible to parents to provide information to help them work with their children.
4. Demonstrate training programs for parents who desire new skills to complement the instruction their children receive in schools.

Any public or nonprofit private agency and institutions of higher learning are eligible for this grant.

Because of the relatively small sums of money available, proposal forms will be quite brief, a maximum of three pages.

For further information and/or application packet, please contact the Basic Skills office at (612) 297-2638.

## **Minnesota Teachers Retirement Association**

### **Notice of Meeting**

The Board of Trustees, Minnesota Teachers Retirement Association, will hold a meeting on Friday, February 20, 1981, at 9 a.m. in the office of the association, 302 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, to consider matters which may properly come before the board.

## OFFICIAL NOTICES

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### Department of Natural Resources Soil and Water Conservation Board

#### Notice of Monthly Meeting

The Minnesota Soil and Water Conservation Board has cancelled their regular monthly meeting for February. The board will resume their regular schedule on March 10, 1981.

### Office of the Secretary of State

#### Notice of Error in List of Vacancies in Multi-member State Agencies

Notice is hereby given that the "Notice of Vacancies in Multi-member State Agencies" published at *State Register*, Volume 5, Number 30, p. 1175 (January 26, 1981) contained an error in the listing for Rehabilitation Review Panel. The words "public member" should have been printed as "physician in medicine."

### Department of Transportation

#### Petition of Chicago and North Western Transportation Company for Authority to Retire and Remove the End 400 Feet of ICC Track No. 24A Including the Turnout of ICC Track No. 494 and ICC Track No. 426, 393 Feet Long, Located at Winona, Minnesota

#### Notice of Application and of Opportunity for Hearing

Notice is hereby given that the Chicago and North Western Transportation Company, with attorneys at 4200 IDS Center, 80 South 8th Street, Minneapolis, Minnesota 55402 has filed a petition with the Commissioner of Transportation pursuant to Minnesota Statutes § 219.741 to retire and remove the end 400 feet of ICC Track No. 24A including the turnout of ICC Track No. 494 and ICC Track No. 426, 393 feet long, located at Winona, Minnesota.

Any person may file a written objection to the action proposed by the petitioner by means of a letter addressed to the Commissioner of Transportation, Transportation Building, Saint Paul, Minnesota 55155, not later than the date specified below. An objection must be received on or before February 24, 1981. The objection should state specifically how the objector's interest will be adversely affected by the proposed action.

The petition recites among other matters that:

"The subject track is no longer needed for rail transportation service, constitutes a continuing and burdensome maintenance expense, and is an unnecessary safety hazard. The track is not used at the present time, and there is no present prospect that the track will be needed in the future. The only shippers, patrons or members of the public who might have any interest in the retention of the tracks or facilities, or who have used the same to any substantial degree within the past several years are Girtler Oil Company of Winona, Minnesota and Shell Oil Company, Bulk Distribution of Winona, Minnesota."

Upon receipt of a written objection, the commissioner will, with respect to the named petitioner, set the matter down for hearing. If no objections are received, the commissioner may grant the relief sought by the petitioner.

If this matter is set for hearing, any person who desires to become a party to this matter must submit a timely petition to intervene to the Hearing Examiner pursuant to 9 MCAR § 2.210, showing how the person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought. All parties have the right to be represented by legal counsel or any other representative of their choice. In the event the objecting party does not do so, or otherwise does not participate in the hearing, the statements contained in the application filed may be taken as true.

January 26, 1981

Richard P. Braun  
Commissioner of Transportation

## **Metropolitan Council**

### **Public Meeting on the Supplement to the Freeway Landfill EIS**

The Metropolitan Council will conduct a public meeting on Thursday, February 26, 1981 at 7 p.m. in the Burnsville High School, 600 E. Hwy. 13, Auditorium C-180, Burnsville, Minn. 55337 for the purpose of receiving public comments on a supplement to the draft Environmental Impact Statement (EIS) evaluating the expansion of the Freeway Landfill located near the intersection of I-35W and Cliff Rd., Burnsville, Minn. Copies of the draft EIS summary and supplement are available from the Metropolitan Council's Public Information Office at 291-6464. For further information or to make advance registration to testify at the meeting, contact Paul Smith of the Council staff at 291-6408.

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OFFICE OF THE STATE REGISTER

State Register and Public Documents Division  
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St. Paul, Minnesota 55155

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**FOR LEGISLATIVE NEWS**

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

**Briefly/Preview**—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

**Perspectives**—Publication about the Senate. Contact Senate Information Office.

**Weekly Wrap-Up**—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

**This Week**—weekly interim bulletin of the House. Contact House Information Office.

**Minnesota Reports**—Old editions available at \$8.25 each plus tax. These are Supreme Court decisions. Recent volumes are available at the Supreme Court, Office of Court Administrator, 317E Capitol, St. Paul, MN 55155. Volumes available are 312 and previous numbers.

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